

**Reconsideration of Table 4-zz of Resolution No. R4-2009-007,
Amendment to the *Water Quality Control Plan for the Coastal
Watersheds of Los Angeles and Ventura Counties*
Prohibiting On-site Wastewater Disposal Systems in the
Malibu Civic Center Area**

Revised Staff Technical Report

~~November 15, 2013~~

January 31, 2014

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**California Regional Water Quality Control Board
Los Angeles Region**

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Los Angeles, California

Table of Contents

- 1. Introduction 1
 - 1.1 Background Regarding Table 4-zz 2
 - 1.2 Commercial Properties..... 3
 - 1.3 Residential Properties 4
- 2. Proposed Action Regarding Table 4-zz..... 6
 - 2.1 Description of Action..... 76
 - 2.2 Final Proposed Table 4-zz with Strikeouts 98
- 3. California Environmental Quality Act 1140
- 4. Public Participation 1244

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1. Introduction

On November 5, 2009, the Regional Water Quality Control Board, Los Angeles Region (Regional Board) adopted, by Resolution No. R4-2009-007, an amendment to Chapter 4 of the *Water Quality Control Plan for the Coastal Watersheds of Los Angeles and Ventura Counties* (Basin Plan) prohibiting on-site wastewater disposal systems (OWDSs) in the Malibu Civic Center Area (2009 Basin Plan Amendment or 2009 BPA). [Attachment 1.] On September 21, 2010, the State Water Resources Control Board (State Water Board) adopted Resolution No. 2010-0045 approving the 2009 Basin Plan Amendment. [Attachment 2.] On December 23, 2010, the Office of Administrative Law (OAL) approved the regulatory provisions of the 2009 BPA. [Attachment 3.] The 2009 Basin Plan Amendment became effective on December 23, 2010.

Upon the effective date, the 2009 Basin Plan Amendment immediately prohibited all new discharges from OWDSs in the Malibu Civic Center Area, with the exception of certain specific projects identified in Table 4-zz, which were deemed by the Regional Board to be “existing OWDSs.” The 2009 BPA prohibits all discharges from existing OWDSs, including those projects identified on Table 4-zz, in accordance with a phased schedule. Phase One (commercial areas) existing OWDSs must cease discharges by November 5, 2015 and Phase Two (residential areas) existing OWDSs must cease discharges by November 5, 2019. The 2009 BPA does not prevent repairs, maintenance, or upgrades to existing OWDSs prior to November 5, 2019, provided that such repairs, maintenance, and upgrades do not expand the capacity of the OWDSs or increase flows of wastewaters.

This Staff Report describes the process resulting in adoption of Table 4-zz, explains the purpose of the proposed reconsideration of Table 4-zz, provides the proposed modifications to Table 4-zz, discusses compliance with the California Environmental Quality Act, and describes the public participation process for this Regional Board action. As explained below, this Regional Board action consists of consideration of adoption of a resolution: (a) clarifying the Regional Board’s intent regarding the criteria for including properties identified on Table 4-zz, (b) ratifying Table 4-zz as modified by Regional Board staff following adoption of the 2009 BPA by the Regional Board and subsequently approved by the State Water Board and OAL, (c) modifying Table 4-zz by deleting four duplicate listings with incorrect assessor parcel numbers (APNs); and (d) considering adding to Table 4-zz any additional properties where there is sufficient evidence that the project has progressed through the appropriate agency’s entitlement process as of November 5, 2009.

The scope of the Regional Board’s action is limited to reconsideration of Table 4-zz. The Regional Board will not be considering any modifications to other portions of the 2009 Basin Plan Amendment.

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1.1 Background Regarding Table 4-zz

Table 4-zz was incorporated into the 2009 Basin Plan Amendment as a logical outgrowth of comments received. Prior to adoption of the 2009 BPA, the Regional Board received written comments and evidence, as well as oral testimony, from the City of Malibu (City), the County of Los Angeles (County), and affected property owners explaining that numerous individual commercial and residential properties within the Malibu Civic Center Area had been in the process of seeking permits from the City or the County and, in some cases, from the Regional Board, to install new or upgraded and expanded OWDSs prior to adoption of the 2009 BPA. The City provided information that many properties had progressed through the “entitlement process”, often referred to as “in the pipeline” projects, and had expended significant funds in the process of seeking permits, but had not yet received the final permits or had not yet started construction at the time of the Regional Board’s adoption of the 2009 BPA. The County also provided information regarding essential public facilities owned and operated by the County that required upgrades involving expansion to existing OWDSs. Several individual property owners within the City or the County provided information demonstrating that they had progressed through the entitlement process and testified about the hardship the immediate prohibition would create. There were also two commercial properties that had submitted a report of waste discharge to the Regional Board prior to the Regional Board’s adoption of the 2009 BPA.

Table 4-zz was created based on recommendations from the City and County and public testimony. The City compiled a list of commercial and residential properties that had progressed through its entitlement process. The City’s list consisted of projects that had, as of November 5, 2009, progressed through the City’s entitlement process because: (1) the project proponent had submitted, at a minimum, a complete application (e.g., site plan, geology and biology reports, and grading and drainage information) to the City for a new construction or remodel project, or (2) the project was deemed complete, conditioned or approved by the City Planning Commission, but not yet constructed. The City’s list primarily included residential properties, but also included some commercial properties that had progressed through the City’s entitlement process and, in some cases, had also submitted a report of waste discharge to the Regional Board. The County’s list of recommended properties included five residential properties and two County public facilities.

During the Regional Board hearing at which the 2009 Basin Plan Amendment was adopted, the Regional Board’s Executive Officer recommended that the Regional Board incorporate Table 4-zz as part of the 2009 BPA. As a result of oral testimony at the hearing, the Executive Officer read into the record a list of properties to be included on Table 4-zz. As adopted by the Regional Board, Table 4-zz consisted of those parcels read into the record by the Executive Officer, including residential and commercial properties that had progressed through the City and County’s entitlement process.

Immediately following the Regional Board’s action to adopt the 2009 Basin Plan Amendment, Regional Board staff was notified that ten residential properties and three

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commercial properties that had applied for new or upgraded OWDSs and had progressed through the appropriate agency's entitlement process were inadvertently not included on Table 4-zz. Thereafter, consistent with the Regional Board's intentions and criteria for inclusion on Table 4-zz, Regional Board staff added those thirteen properties to Table 4-zz. The version of Table 4-zz with the newly added thirteen properties was provided to the State Water Board for consideration in its approval of the 2009 Basin Plan Amendment. The State Water Board approved the 2009 BPA, including Table 4-zz, as submitted by the Regional Board. Subsequently, OAL approved the 2009 BPA.

Regional Board staff recognizes that there may be additional properties within the Malibu Civic Center Area that had progressed through the appropriate agency's entitlement process as of November 5, 2009, but were inadvertently not included on Table 4-zz.

It should be noted that the properties listed in Table 4-zz, although exempt from the immediate prohibition of OWDS discharges that went into effect when the 2009 Basin Plan Amendment became effective, are deemed to be existing OWDSs and therefore are subject to the prohibition contained in the 2009 BPA, which requires existing OWDS discharges in commercial areas to cease by November 5, 2015, and existing OWDS discharges in residential areas to cease by November 5, 2019.

1.2 Commercial Properties

Seven commercial properties were included on Table 4-zz as approved by the State Water Board. Of those seven properties, four needed either emergency repairs or upgrades to improve the OWDSs to prevent spills.¹ Two of the commercial properties consisted of new projects.² One of the commercial properties had submitted a report of waste discharge seeking waste discharge requirements/water reclamation requirements from the Regional Board prior to adoption of the 2009 BPA.³

The following commercial properties were read into the record by the Executive Officer and included on Table 4-zz as adopted by the Regional Board on November 5, 2009:

- 22959 Pacific Coast Highway – a vacant lot intended for commercial development
- 22941 Pacific Coast Highway - three adjacent parcels (22931, 22935 and 22941 Pacific Coast Highway) that had existing OWDSs needing emergency repairs to address ongoing leak and spill issues.

¹ County Surfrider Beach facility at 23060.5 PCH, County Fire Station at 23720 Malibu Road, Chabad House at 22941 PCH and Malibu Country Mart II at 23410 Civic Center Way.

² Proposed Surfrider Plaza at 22959 PCH and proposed Whole Food Market at 23401 Civic Center Way.

³ Malibu La Paz at 3700 La Paz Lane.

- 23060.5 Pacific Coast Highway and 23720 Malibu Road - Los Angeles County facilities that have existing OWDSs needing upgrades.

Consistent with the Regional Board’s intentions and criteria for inclusion on Table 4-zz, the following three commercial properties that had progressed through the City or County’s entitlement process were added to Table 4-zz after adoption by the Regional Board, but before submittal to the State Water Board for approval.

- 23410 Civic Center Way - has an existing OWDS and needed an upgrade.⁴
- 23401 Civic Center Way - a vacant commercial parcel.⁵
- 3700 La Paz Road - a commercial parcel with no existing OWDS that had submitted a report of waste discharge to the Regional Board at the time of adoption of the Basin Plan Amendment.⁶

1.3 Residential Properties

The residential properties added to Table 4-zz by Regional Board staff after adoption of the 2009 BPA included the Crummer Project⁷, which consisted of five properties within the City limits (24108, 24120, 24134, 24150 and 24174 Pacific Coast Highway) that had been referenced at the Regional Board hearing and had progressed through the City’s entitlement process and five properties within the County (3215, 3217, 3219, and 3221 Serra Road, and 3240 Cross Creek Road) that had been referenced at the Regional Board hearing and had progressed through the County’s entitlement process.

The following four residential properties were listed twice on Table 4-zz (with incorrect APNs) on the date of adoption by the Regional Board and were read into the record by the Executive Officer:

<u>Address</u>	<u>APN</u>
23917 Malibu Road	0000000067
23919 Malibu Road	0000000068

⁴ The property owner has not constructed the upgrade but has indicated its intent to connect to the community wastewater treatment system being planned by the City.

⁵ The property owner has not constructed the facility, but has indicated the intent to connect to the community wastewater treatment system being planned by the City.

⁶ Subsequent to the November 5, 2009 adoption of the Basin Plan Amendment, the Regional Board adopted Waste Discharge Requirements Order No. R4-2010-0107 for the Malibu La Paz project at 3700 La Paz Road, that included conditions requiring the property to connect to a community wastewater treatment system when constructed for discharge of effluent from system upset which cannot be stored or used for irrigation.

⁷ The Crummer Project, consisting of 24108, 24120, 24134, 24150 and 24174 Pacific Coast Highway, has actively participated in forming the Community Facility District (CFD) and is anticipated to be connected with the centralized wastewater treatment plant, when available, in Phase I as set forth at MOU (see footnote no. 10).

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23921 Malibu Road	0000000069
23923 Malibu Road	0000000070

The proper APN numbers are specified below:

<u>Address</u>	<u>APN</u>
23917 Malibu Road	4458018004
23919 Malibu Road	4458018004
23921 Malibu Road	4458018004
23923 Malibu Road	4458018004

The first four duplicate listings with incorrect APNs should be deleted from Table 4-zz.

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2. Proposed Action Regarding Table 4-zz

This Regional Board action is not a general reconsideration of the 2009 Basin Plan Amendment. Rather, in order to address perceived concerns related to approval of the projects identified on Table 4-zz, the purpose of this action is:

1. To clarify the Regional Board's intent regarding the criteria for including properties identified on Table 4-zz by specifying the meaning of the phrase "progressed through the entitlement process" as set forth in Resolved 1 of Resolution No. R4-2009-007;
2. To modify Table 4-zz by deleting four duplicate listings with incorrect APNs;
3. To officially ratify Table 4-zz as modified by Regional Board staff following adoption of the 2009 Basin Plan Amendment; and
4. To consider adding to Table 4-zz any additional properties where there is sufficient evidence that the project has progressed through the appropriate agency's entitlement process as of November 5, 2009.

The Regional Board ~~is providing~~ provided an opportunity for interested persons to comment and submit evidence only on Table 4-zz. Interested persons ~~may were~~ provided an opportunity to request inclusion on Table 4-zz if they provide sufficient evidence that their project had progressed through the appropriate agency's entitlement process as of November 5, 2009. Any comments related to other portions of the 2009 Basin Plan Amendment ~~will were~~ not be accepted into the Administrative Record for this matter nor responded to.

On December 27, 2013, Akin Gump on behalf of Green Acres LLC submitted comments on the draft resolution and requested that the property at 4000 Malibu Canyon Road, Malibu (APNs (APNs 4458-028-015, 4458-028-019 and 4458-030-007) be added to the list of properties set forth in Table 4-zz of the 2009 Basin Plan Amendment. Green Acres' Rancho Malibu Hotel (4000 Malibu Canyon Road) is entitled to be listed on Table 4-zz. Green Acres provided information to demonstrate that at the time of the 2009 Basin Plan Amendment, Green Acres and its predecessors-in-interest had not only applied for, but had actually obtained, several significant entitlements for the Rancho Malibu Hotel at 4000 Malibu Canyon Road. In particular, on January 7, 1986, the Coastal Commission approved a coastal development permit for the Rancho Malibu Hotel. Permit No. 5-85-418. Furthermore, on March 23, 1998, the City of Malibu approved a conditional use permit, variance, and site plan review, and certified an environmental impact report (EIR) for the proposed project. On August 3, 2011, the City of Malibu submitted a letter to the Regional Board explaining that the Rancho Malibu Hotel project had been "inadvertently overlooked" and was "actually much farther along than other pipeline projects" that were included on Table 4-zz. Green Acres LLC also stated that it and its predecessors-in-interest invested substantial time and money processing and obtaining the above entitlements. In its pending Petition for Writ of Mandate, Green Acres estimates that, at the time of the 2009 Basin Plan

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Amendment, total project development and processing costs approximated \$4 million. The City of Malibu is in the process of additional environmental review of the project under CEQA.

At the hearing at which the Regional Board adopted the Malibu Civic Center OWDS Prohibition, various persons testified that the immediate prohibition could create a severe hardship considering that many property owners had expended considerable time and funds to submit their applications to the City and/or County. The Regional Board agreed that a temporary exemption from the immediate prohibition on discharges from OWDSs in the Malibu Civic Center Area was appropriate for those properties that were “in the pipeline”. The Regional Board thus added Table 4-zz, which provided a temporary exemption to certain listed properties. Green Acres LLC has provided ample evidence that as of November 5, 2009, it had “progressed through the entitlement process.” Based on the documentation submitted by Green Acres, LCC, Regional Board staff recommended that the property at 4000 Malibu Canyon Road be added to Table 4-zz because it had progressed through the entitlement process as of November 5, 2009 to the same extent or greater than other commercial properties included on Table 4-zz on November 5, 2009. OWDSs on properties listed on Table 4-zz are considered “existing” OWDSs and subject to the final prohibition that goes into effect on November 5, 2015 for commercial properties and November 5, 2019 for residential properties. In addition, Green Acres would not be allowed to construct and operate an OWDS on the property without applying for and obtaining waste discharge requirements from the Regional Board. Additional review by the Regional Board under CEQA is not required since the proposed action does not make changes that were not addressed in the environmental documentation prepared for the 2009 Basin Plan Amendment and because the City of Malibu has certified an EIR for the project and is in the process of additional environmental review of the project

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2.1 Description of Action

As set forth in the administrative record to the 2009 Basin Plan Amendment, Table 4-zz was based on the following information provided in comments to the Regional Board. Most of the properties identified on Table 4-zz were contained in a list of residential and commercial properties provided by the City to the Regional Board that had progressed through the City’s entitlement process. As described by the City, properties were included on its list if, by November 5, 2009, the: (1) project proponent had submitted a complete application (e.g., site plan, geology and biology reports, and grading and drainage information) for a new construction or remodel project, or (2) the ODWS project had been deemed complete, conditioned or approved by the City Planning Commission, but not yet constructed. In addition, two of the commercial properties on Table 4-zz had submitted a report of waste discharge to the Regional Board prior to adoption of the Basin Plan Amendment⁸ and three adjacent commercial properties relied on an OWDS that needed emergency repairs to prevent further leaks and/or

⁸ La Paz, and Chabad House

spills.⁹ The other parcels on Table 4-zz consisted of County parcels, including 5 residential parcels that had progressed through the County’s entitlement process and two County public service facilities.

It was the Regional Board’s intent at the time of adoption of the 2009 Basin Plan Amendment that the phrase “progressed through the entitlement process” in Resolved 1 of Resolution No. R4-2009-007 referred to projects where, as of November 5, 2009,: (1) the project proponent had submitted a complete application (e.g., site plan, geology and biology reports, and grading and drainage information) to the appropriate agency for new construction or remodel projects, and/or (2) the OWDS project has been deemed complete, conditioned or approved by the City Planning Commission, but not yet constructed. In addition, while not expressly stated, the Regional Board was provided information indicating that commercial and residential properties that had submitted a report of waste discharge to the Regional Board prior to November 5, 2009 should be included on Table 4-zz.

The tentative resolution for consideration by the Regional Board clarifies the Regional Board’s intent regarding the criteria for including properties identified on Table 4-zz by specifying the meaning of the phrase “progressed through the entitlement process” as set forth in Resolved 1 of Resolution No. R4-2009-007.

The Regional Board also proposes to modify Table 4-zz by deleting the four duplicate listings with incorrect APNs and adding additional projects where sufficient evidence is provided during the public comment period that those properties had progressed through the appropriate agency’s entitlement process as of November 5, 2009. Green Acres LLC provided adequate documentation that it had progressed through the entitlement process of the California Coastal Commission and the City of Malibu and is proposed to be added to Table 4-zz. The Regional Board also proposes to ratify the modifications to Table 4-zz made by Regional Board staff following the Regional Board’s adoption of Resolution No. R4-2009-007 on November 5, 2009. Consistent with the administrative record for the adoption of the 2009 Basin Plan Amendment, those parcels had progressed through the entitlement process at the time of adoption of the 2009 Basin Plan Amendment; and some had also submitted a report of waste discharge to the Regional Board.

This action does not propose to alter the 2009 Basin Plan Amendment in any other way.¹⁰

⁹ Chabad House

¹⁰ Note that, subsequent to the effective date of the 2009 Basin Plan Amendment, the Regional Board, the State Water Board, and the City of Malibu, entered into a Memorandum of Understanding (MOU) dated August 19, 2011, in which the City of Malibu agreed to construct a centralized wastewater treatment plant according to a specified schedule and the Regional Board agreed not to enforce the prohibition against individual property owners so long as the City implements the MOU as agreed. The MOU may be revised to take into account any changed circumstances or may be terminated by any of the parties. Today’s action does not affect the MOU and no comments regarding the MOU will be accepted.

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2.2 Final Proposed Table 4-zz with Strikeouts

The following is the version of Table 4-zz submitted to and approved by both the State Water Board and OAL, with strikeouts indicating duplicative entries.

Malibu Civic Center Area OWDS Prohibition, Table 4-zz

Address	APN
24001 Malibu Road	4458018005
3469 Cross Creek Road	4458023003
3504 Coast View Drive	4458026014
23038 Pacific Coast Highway	4452005001
23060.5 Pacific Coast Highway	4452006902
3516 Sweetwater Mesa Road	4452017006
2930 Sweetwater Mesa Road	4452025021
2860 Sweetwater Mesa Road	4452025023
23460 Malibu Colony Drive	4458004031
23872 Malibu Road	4458007019
23812 Malibu Road	4458007028
24024 Malibu Road	4458009007
24380 Malibu Road	4458011021
22959 Pacific Coast Highway	4452019005
22941 Pacific Coast Highway	4452019009
24132 Malibu Road	4458010009
24266 Malibu Road	4458011010
23618 Malibu Colony Drive	4458005040
23401 Civic Center Way	4458022001
23800 Malibu Crest Drive	4458024038
3700 La Paz Lane	4458022025
23915 Malibu Road	4458018004
23410 Civic Center Way	4458020010
23816 Malibu Crest Drive	4458024023
3556 Sweetwater Mesa Road	4452017008
3314 Serra Road	4452026012
23917 Malibu Road	0000000067
23919 Malibu Road	0000000068
23921 Malibu Road	0000000069
23923 Malibu Road	0000000070
23652 Malibu Colony Drive	4458005030
23664 Malibu Road	4458001003
23720 Malibu Road	4458002900
3535 Coast View Drive	4458027030
23316 Malibu Colony Drive	4452008016
23684 Malibu Colony Drive	4458005022
23872 Malibu Road	4458007019

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Malibu Civic Center Area OWDS Prohibition, Table 4-zz (continued)

Address	APN
24052 Malibu Road	4458009002
23405 Malibu Colony Drive	4452010010
23681 Malibu Colony Drive	4458002008
23917 Malibu Road	4458018004
23919 Malibu Road	4458018004
23921 Malibu Road	4458018004
23923 Malibu Road	4458018004
24108 Pacific Coast Highway	4458018002
24120 Pacific Coast Highway	4458018018
24134 Pacific Coast Highway	4458018019
24150 Pacific Coast Highway	APN not available
24174 Pacific Coast Highway	APN not available
3215 Serra Road	4457003023
3217 Serra Road	4457003021, 4457003022
3219 Serra Road	4457003019
3221 Serra Road	4457003020
3240 Cross Creek Road	4457002038
<u>4000 Malibu Canyon Road</u>	<u>4458-028-015, 4458-028-019 and 4458-030-007</u>

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3. California Environmental Quality Act

Pursuant to Public Resources Code section 21080.5, the Resources Agency has approved the Regional Boards' basin planning process as a "certified regulatory program" that adequately satisfies the California Environmental Quality Act (CEQA) (Public Resources Code section 21000 et seq.) requirements for preparing environmental documents. (14 Cal. Code Regs. § 15251(g); 23 Cal. Code Regs. § 3782.) The Regional Board previously prepared "substitute environmental documents" for the 2009 Basin Plan Amendment, adopted by Resolution No. R4-2009-007, which was filed with the Resources Agency on January 18, 2011. Those documents are available on the Regional Board's website under the section: "Prohibition – On-site Wastewater Disposal Systems in the Malibu Civic Center Areas" at http://www.waterboards.ca.gov/losangeles/water_issues/programs/basin_plan/. The substitute environmental documents contained the required environmental documentation under the State Water Board's CEQA regulations (23 Cal. Code Regs § 3777) to evaluate the potential environmental impacts of the adoption of the 2009 Basin Plan Amendment. The project itself was the adoption of a prohibition on OWDSs in the Malibu Civic Center Area. In preparing the previous substitute environmental documents, the Regional Board considered the requirements of Public Resources Code section 21159 and California Code of Regulations, Title 14, section 15187, and intended those documents to serve as a tier 1 environmental review. The previous substitute environmental documents contained significant environmental analysis and numerous findings related to the reasonably foreseeable methods of compliance, the impacts of the methods of compliance, feasible mitigation measures, and alternative means of compliance.

This Regional Board action consists of a reconsideration of Table 4-zz of the 2009 Basin Plan Amendment and does not result in any new environmental effects not previously analyzed. This action does not alter the environmental analysis that was previously prepared for the adoption of a prohibition on OWDSs in the Malibu Civic Center Area because the revisions to Table 4-zz will not result in different implementation actions than those previously analyzed for the 2009 Basin Plan Amendment, or different effects upon the environment. Moreover, no additional reasonably foreseeable methods of compliance warrant environmental analysis pursuant to Public Resources Code section 21159 and California Code of Regulations, Title 14, section 15187. As such, this amendment to the Basin Plan is consistent with the prior CEQA documentation and no additional environmental analysis is required.

Further, consistent with California Code of Regulations, title 14, section 15162, the Regional Board has determined that no subsequent environmental documents shall be prepared because this Regional Board action does not involve new significant environmental effects, a substantial increase in the severity of previously identified significant effects, or mitigation measures or alternatives that are considerably different from those analyzed in the previous substitute environmental documentation.

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4. Public Participation

The public has had a reasonable opportunity to participate in the review of this amendment to the Basin Plan. In accordance with the requirements of California Water Code section 13244, notice of the hearing for this Regional Board action was published on November 15, 2013 in the Los Angeles Times. In addition, a draft of the proposed resolution and Table 4-zz and the staff technical report was released for public review and comment on November 15, 2013, and a Notice of Hearing was published and circulated 45 days preceding Regional Board action in order to give interested persons time to review and comment on the proposed action regarding Table 4-zz. The Regional Board provided an opportunity for properties within the Malibu Civic Center Area to request inclusion on Table 4-zz if they provide sufficient evidence that the project had progressed through the City or County's entitlement process as of November 5, 2009. Persons who had indicated an interest in the 2009 Basin Plan Amendment were provided individual notice.

Regional Board staff will provide responses to written and oral comments received from interested persons. The Regional Board will hold a public hearing on February 6, 2014 to consider the proposed resolution and adoption of the modified Table 4-zz. The Regional Board will only accept oral and written comments that pertain to the proposed action. The Regional Board will not accept any oral and written comments regarding any other portion of the 2009 Basin Plan Amendment or the Memorandum of Understanding between the City of Malibu, the Regional Board, and the State Water Board.

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